Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-824

LOUIS I. FELDMAN, *Petitioner*,

v.

KNUD AUMSTRUP, *Respondent*.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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Knud Aunstrup, Respondent, respectfully prays that the Petition for Writ of Certiorari of Petitioner Louis I. Feldman be denied by this honorable Court. Respondents grounds and reasons why the cause should not be reviewed by this Honorable Court are as follows:

1. Petitioner has shown no special and important reason why this honorable Court should review the decision of the United States Court of Customs and Patent Appeals.

2. All the questions presented by Petitioner, but one, were not in issue below, have no bearing on the case, and are moot.

3. The one question presented by Petitioner which was in issue below, and which is a properly justiciable issue which this honorable Court may review, lacks any special and important reasons for the exercise of the discretion of this Court.

ARGUMENT

Much of the argument presented by Petitioner is dependent upon a supposed "augumentation" of Respondent's disclosure of the invention in the specification of his application permitted by the decision below, and some "retroactive" benefit of an "augmented disclosure." There is no basis in fact or in the record for such a proposition. Respondent's disclosure stands today exactly as it did upon its filing date and, at such time as United States Letters Patent issue to Respondent, the disclosure in the specification printed in such Letters Patent will still remain unaltered, unchanged and unaugmented. Nothing in the decisions of the Patent and Trademark Office Board of Patent Interferences or of the United States Court of Customs and Patent Appeals could even colorably be construed to permit such an "augmentation," much less give it any "retroactive" effect.

It would appear that Petitioner confuses the specification disclosure with the condition of what is disclosed. Respondent's patent application as filed made a complete disclosure of the microorganism required for practice of the invention, including reference to the deposit previously made. The disclosure thus made in the application specification was complete and suffi-

cient at the filing date and has not been "augmented" in any fashion, and this Court will find nothing in the decision below which would permit Respondent to "augment" the disclosure of his specification. Respondent's disclosure of the invention in his specification is in no manner "augmented" by the removal of restrictions upon access to his deposit during pendency, and he has not been given any "retroactive" benefit of any change in his disclosure since there has been no change of any kind in the disclosure of his specification as originally filed.

It is submitted that clarification of Petitioner's confusion on the foregoing points is fully sufficient and adequate to dispose of questions 2 and 3 presented by Petitioner at page 3 of his petition. A simple clarification of the basis and import of the decision below presents no justiciable issue for determination and does not appear to require or justify the exercise of the discretion of this honorable Court.

For establishing a date of invention, Respondent has relied, as provided by 35 U.S.C. 119, upon the filing date of his prior British application. Respondent has *not* relied upon any other activity in a foreign country to establish a *date of invention,* and has not violated the precepts of 35 U.S.C. 104. Since Respondent's deposit of his microorganism, which occurred in a foreign country, have *not* been relied upon to establish a *date of invention,* it is readily apparent that questions 4 and 5 posed by Petitioner at page 3 of his petition are moot in the present case and pose no justiciable issue for consideration of this honorable Court.

Petitioner asserts no special or important reasons why the remaining question 1 at page 3, of his petition

should be considered by this Court. The current state of the law, as developed in the opinions below, is reasonable and effective and appropriate to the needs of the patent system. Certainly the interest of the legislative branch of the Government in this area does not mandate consideration by this Court. To issue the writ solely on such basis, as Petitioner urges, would be to commit this Court to advise the legislative branch when clearly that function is being performed in appropriate fashion.

CONCLUSION

Respondent submits that the intervention of this honorable Court is not adequately invoked by the instant petition and is not warranted by the nature of the case in controversy nor by any of the questions or arguments posed by Petitioner. It is respectfully prayed that the petition be denied and the writ not issue.

Respectfully submitted,

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January 9, 1976

MF:JSW:kaw